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Supreme Court of the United States

OCTOBER TERM, 1955

No._____

ROBERT FRANCIS CLIFTON, PETITIONER,

versus

UNITED STATES OF AMERICA, RESPONDENT,

AND

ROBERT FRANCIS CLIFTON, PETITIONER,

versus

UNITED STATES OF AMERICA, RESPONDENT,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

The petitioner prays that a Writ of Certiorari issue to review the decision and judgment of the United States Court of Appeals for the Fourth Circuit rendered in these cases.

OPINIONS BELOW

The sentences imposed by the District Court are unreported

and are printed in the appendix, infra, pp_____. The opinion of the Court of Appeals is not yet reported and is printed in the appendix, infra, pp_____.

JURISDICTION

The decision of the Court of Appeals in these cases was dated and entered on July 19, 1955. On the 17th day of August, 1955, Mr. Justice Stanley Reed passed an order extending time to file petition for Writ of Certiorari until and including the 17th day of September, 1955. The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Section 1254.

QUESTION PRESENTED FOR REVIEW

Was it proper for the District Court to deny the motion of defendant to suppress evidence, and on the trial to entertain such evidence, which was procured by a search and seizure of defendant's home when the officers did not have a search warrant, defendant was not present and defendant had not been arrested?

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the Constitution of The United States.

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT

References made of testimony are to pages of the official

Reporter's transcript, and such are printed in the appendix to the brief of petitioner filed in the Court of Appeals, copies of which have been filed with this Court.

Jurisdiction was had in these cases in the United States District Court for the Eastern District of South Carolina, Aiken Division, upon the charges contained in the indictments, violation of 26 U.S.C. Sections 2913 and 3253.

Petitioner was tried and convicted by a jury upon two identical indictments which were consolidated for trial, charging violations on October 9, 1953, and October 17, 1953; a co-defendant, Earl Padgett, pled guilty to the charges contained in the indictments. Prior to trial motion was made for suppression of evidence procured by officers through an unreasonable search and seizure of petitioner's home; this motion was denied and the evidence entertained.

On October 9, 1953 investigators for the Internal Revenue Department, with a citizen informer, went to the yard of petitioner's home and purchased illegal liquor from Earl Padgett. They returned on October 17, 1955, and after again purchasing illegal liquor from Padgett arrested Padgett in the yard. (Tr. pp. 4, 5, 6, 31)

Thereupon the officers went to the house of petitioner and identified themselves to the wife of petitioner and went into the house without a search warrant. (Tr. pp. 6, 7, 9, 25.) A search was then made of the house and the officers found therein two hundred fifty pounds of sugar, thirty-five gallons of illicit whiskey in Mason jars and kegs; they searched in a closet where they found and searched a jacket, finding in the jacket three hundred sixty-two dollars in money, and on the shelf a sawed-off shot gun pistol type weapon, all of these articles were described by the officers in their testimony (Tr. pp 9, 10)

The officers did not at anytime or on any occasion see

petitioner at or near the home and had no knowledge of him having anything to do with the liquor except through complaints. They did not see or arrest him but only left word for him to go to Aiken for arraignment and to put up bond. (Tr. pp. 22, 26, 31). Petitioners wife was not arrested nor were charges brought against her for several months. However, she did plead guilty upon a separate indictment.

After conviction in the District Court an appeal was made and the Court of Appeals held that under the circumstances of the arrest of Padgett a search of Clifton's home was not unreasonable and affirmed the District Court.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Appeals is not in accord with the applicable decisions of this Court:

The decision of the Court below is in conflict with the long line of decisions holding searches and seizures to be unreasonable in cases involving acts which are malum prohibitum, McDonald v. United States, 335 U.S. 451; Trupiano v. United States, 334 U.S. 699; Johnson v. United States, 333 U. S. 10; Nathanson v. United States, 290 U.S. 41.

The decision of the Court below is in conflict with the decision of this Court in Agnello v. United States 269 U.S. 20. There this Court held: "A person's house cannot lawfully be searched without a search warrant, except as an incident to a lawful arrest *therein*." (Italics added)

Strong reliance was placed on Rabinowitz v. United States 339 U.S. 56. However, this Court in that case gave five reasons why the District Court's conclusion should be sustained:

> "(1) the search and seizure were incident to a valid arrest; (2) the place of the search was a business room to which the public, including the officers, was invited;

(3) the room was small and under the immediate control of respondent; (4) the search did not extend beyond the room used for unlawful purposes; (5) the possession of the forged and altered stamps was a crime, just as it is a crime to possess burglars' tools, lottery tickets or counterfeit money."

The first four of these five reasons are not present in the instant case.

The writer hereof, after lengthy search, believes that the decision below does more to detract from the legal maxim, "every man's house is his castle," than any decision ever sanctioned by this Court in that it would, upon the arrest of one, allow a search of the home of another, the home not being under the control of the person arrested; and allow the use of evidence thereby secured against the home owner who was not present at the time of the arrest and search.

Therefore, it is submitted that the Court of Appeals, in affirming the District Court and holding that such an arrest removes the requirements of the Fourth Amendment to The Constitution, violated the applicable decisions of this Court. For these reasons this petition for writ of certiorari should be granted.

Respectfully submitted,

HENRY HAMMER
CLYDE A. ELTZROTH
Attorneys for Petitioner.

APPENDIX

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SENTENCE

"The Court: As to Robert Francis Clifton, in case number 20,089—that is the one respecting the quart of whiskey, I believe, as having been committed on the 9th day of October 1953.

In case number 20,089 the sentence and judgment of the Court is that you be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of seven months and that you pay a fine of $100.00. In the second case, in the one alleged to have been committed on the 17th day of October, 1953, which is number 20,090, the sentence and judgment of the Court is that you be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of eighteen months and that you pay a fine of $200.00, suspended after full compliance with the sentence imposed in number 20,089, and you will then be placed on probation for a period of four years."

OPINION OF COURT OF APPEALS

United States Court of Appeals For the Fourth Circuit

Nos. 6993-6994

Dobie, Circuit Judge:

"Robert Francis Clifton (hereinafter called Clifton) was found guilty on all counts of two indictments charging criminal violations of the Internal Revenue laws pertaining to liquor, after a jury trial in the United States District Court for the Eastern District of South Carolina. Clifton has appealed to us, contending that evidence admitted over objection of his

counsel was obtained by an unreasonable search and seizure and that hearsay testimony was admitted in evidence against him. Neither of these contentions warrants reversal of the decision of the District Court.

The facts are relatively simple. On October 17, 1953, two investigators of the United States Alcohol and Tobacco Tax Division, together with an informer, drove to the rear yard of Clifton's house in Hampton County, South Carolina. The informer went to the house and told the person answering his knock that he wished to buy a jar of whiskey. The informer was told to see Earl Padgett, who lived down the road. The investigators and the informer brought Padgett to Clifton's back yard. Padgett entered the back door and came out with a half-gallon of untaxed whiskey. The investigators paid Padgett for the whiskey, identified themselves and arrested him.

One of the investigators then went to the back door of Clifton's house and knocked. Mrs. Clifton answered and made no objection when the investigator entered the room from which the whiskey had come. Among other things, 250 pounds of sugar and 35 gallons of illicit whiskey were found in the room. The whiskey was destroyed and the sugar was seized.

The investigators had neither a warrant for the arrest of Padgett nor a search warrant for the house. Clifton's motion to suppress evidence obtained by this search was denied by the trial court. The record shows that investigators had also purchased untaxed whiskey from Padgett on October 9, 1953, in the back yard of Clifton's home. The two indictments were for the separate violations of October 9 and October 17, 1953.

In United States v. Rabinowitz, 339 U.S. 56, the Supreme Court indicated that whether a search and seizure without a

warrant is reasonable within the meaning of the Fourth Amendment depends upon the facts of each particular case and is not a question easily answered by recourse to mechanical tests. It has long been recognized that some degree of search and seizure without warrant is permissible if made after a lawful arrest. Agnello v. United States, 269 U.S. 20; Weeks v. United States, 232 U.S. 383. Of course, as we pointed out in Henderson v. United States, 12F. (2d) 528, the arrest must be more than a mere sham and not merely an excuse for the search. The arrest of Padgett, although without warrant, was lawful, since he had committed a felony in the presence of the investigators. Carroll v. United States, 267 U.S. 132; Janney v. United States, 206 F. (2d) 601. Although counsel for Clifton contends otherwise, we think the search and seizure were clearly incidental to this arrest and were not proscribed by our decision in the Henderson case, supra.

The investigators had just purchased untaxed whiskey from Padgett after watching him obtain it from the room which they later searched. The search did not extend beyond the room from which the whiskey had come, and no force was used. Under these circumstances, we feel that the search was reasonable.

Counsel for Clifton contends that the search was not reasonable because Clifton was not the party arrested. There is no merit in this contention. The Fourth Amendment was not breached by a search of Clifton's home when, prior to the search, a felon was arrested in Clifton's back yard immediately after bringing untaxed whiskey out of Clifton's house. Clifton sought to insulate himself from such a search by rarely being at the house and by allowing Padgett to run his business for him. If a person allows a felon to use his home for illegal purposes, then evidence obtained on a search made after arrest of the felon is admissible against the

owner of the home. The search in this case was reasonable, being incidental to the arrest of Padgett. It is not necessary that the owner be the party arrested in such a case.

Clifton also contends that the trial judge improperly admitted in evidence the following testimony of investigator Haddon:

> "Padgett stated just as soon as he was arrested that it wasn't his whiskey, that he was working for Bob Clifton and wanted us to be as easy as we could on him."

We quite agree with Clifton's counsel that this statement standing alone was inadmissible hearsay and should have been stricken. We do not feel, however, that its admission was reversible error. Before completion of the trial, Clifton's counsel put Padgett on as a witness and Padgett testified that he worked for Clifton as a farmer but sold whiskey for Mrs. Clifton. Padgett also testified at length concerning the statement he made immediately after his arrest. In view of this testimony, the statement of Haddon was admissible to impeach Padgett's testimony, even though it would have been inadmissible hearsay otherwise. In any event, we feel that the admission of this statement, even if error, was harmless error and did not alter the case against Clifton, in view of the record before us, which clearly established the guilt of Clifton. Also, Clifton's contention that a verdict of acquittal should have been directed is groundless in view of the evidence before us.

For the reasons stated above, the decision of the District Court is affirmed.

Affirmed."

ORDER EXTENDING TIME TO FILE FOR WRIT OF CERTIORARI

SUPREME COURT OF THE UNITED STATES

No. , October Term, 1955.

ROBERT FRANCIS CLIFTON,
Petitioner

vs.

UNITED STATES OF AMERICA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including September 17, 1955.

/S/ Stanley Reed
Associate Justice of the Supreme
Court of the United States.

Dated this seventeenth
day of August, 1955.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 402

ROBERT FRANCIS CLIFTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 8-11) is reported at 224 F. 2d 329.

JURISDICTION

The judgments of the Court of Appeals were entered on July 19, 1955 (R. 40, 44). On August 17, 1955, Mr. Justice Reed extended the time for filing a petition for a writ of certiorari to September 17, 1955 (Pet. 12). The petition was filed on Septem-

ber 16, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Petitioner's employee was arrested by federal officers in the backyard at petitioner's farmhouse while consummating a sale to an informer of non-taxpaid liquor which the employee had brought from a door leading to a particular room in petitioner's farmhouse, and after the employee had been observed by a federal officer on a previous occasion to make a like sale in like manner and to carry similar liquor from the same door and sell it to other persons who had driven their automobiles into the backyard a short distance from that door. Immediately after the arrest and as incident thereto, the federal officers, without a warrant, entered the farmhouse through the door used by the employee and searched the adjoining room where they seized a large quantity of non-taxpaid liquor and other articles that appeared to be involved in the violation of the liquor-tax laws.

The question presented is whether the search, made as incident to the arrest, of the part of the house where the officers had observed the employee to go and come to procure the non-taxpaid liquor was reasonable and legal as against petitioner, the owner of the property.

STATEMENT

Petitioner was jointly charged with a co-defendant, Earl Padgett, under two indictments charging the removing, concealing and selling of non-tax-

paid liquor in violation of 26 U.S.C. (1952 ed.) 2913 and 3253 on October 9, 1953, and October 17, 1953 (R. 1-2). After a jury trial petitioner was found guilty under each count of both indictments.[1] Petitioner was sentenced to seven months' imprisonment and a fine of $100 under the first indictment, and to 18 months imprisonment and a fine of $200 under the second indictment, the latter sentence suspended until full compliance with the punishment under the first indictment, at which time petitioner is to be placed on probation for a period of four years (R. 3, 31, 32, 41). The judgments were unanimously affirmed on appeal (R. 40, 44).

The only issue is the validity of the search by which liquor was found on petitioner's premises. The evidence relating to that issue may be summarized as follows:

On October 9, 1953, about 8 p. m., in response to complaints that "whiskey was being sold from a house," Robert Lane, an Internal Revenue agent, drove a truck to the backyard of a farmhouse known as the "Clifton House", accompanied by an informer (R. 21). The house had two rear doors, both of which had to be entered through a screen porch. One door led to the kitchen, the other to a bedroom (R. 21). The agent and the informer left the truck, and knocked at one of the doors. A woman, later identified as petitioner's wife, came to the porch door. When the informer asked her

[1] Co-defendant Earl Padgett pleaded guilty to the offenses charged in both indictments.

for liquor, she replied that Earl would give it to them. Within two minutes an automobile drove up and a man, later identified as Earl Padgett, got out, crossed the porch and went through the door leading to the bedroom. Within one or two minutes he reappeared, bringing with him two jars which he handed to another man sitting in a waiting automobile. Padgett then came over to the truck to which the agent and the informer had returned. The informer stated that he would like to have a jar of whiskey. Padgett stated that they could have only a quart "because they were running low." He went back into the house and returned with a quart of whiskey which he sold to the informer for two dollars. Before the two men drove away, they observed that the procedure was repeated with someone in another automobile (R. 21-22).

On October 17, 1953, about 7 p. m., Officer Lane, accompanied by another Internal Revenue officer and an informer, drove again to the rear of the house. The informer got out and knocked on the porch door, and in response a man came out and asked the informer what his business was. The informer stated that he would like a jar of whiskey. The man replied that (R. 22) they could get it if they went down the road for Earl. The men drove approximately two hundred yards to another small house, blew the horn, and Earl Padgett came out. Padgett got into the automobile and the group drove back to the Clifton home. Padgett got out, went into the same door leading to the bedroom

that he had entered on October 9th, and came back with a half gallon of "moonshine whiskey". Officer Lane tested it to make sure that it was whiskey, and then asked the price. Padgett stated that it was $4.00. Officer Lane than handed him $4.00, identified himself as a federal officer, and placed Padgett under arrest (R. 22). Padgett stated that the whiskey was not his, that he was "working for Bob Clifton" and wanted the officers to be as easy as they could on him (R. 26).

The officers then went up to the screen door and knocked. When petitioner's wife appeared, the officers identified themselves and said they would like to enter the house to get the rest of the whiskey (R. 23). The officers entered through the door that Earl Padgett had used to get to the bedroom (R. 14, 15, 23, 24). In that bedroom they found large quantities of non-taxpaid liquor, liquor-making paraphernalia (R. 15, 18, 24), and a sawed-off shotgun with a pistol grip (R. 17).

Petitioner was absent from the house at the time of the search, but he later appeared voluntarily for arraignment in response to a message left at the house (R. 27-28). On the trial, Padgett admitted that he lived on petitioner's "place", that it was ordinarily his job to help out with the farm work, but since there was not much farm work to do at that time he had been selling liquor for petitioner's wife (R. 28-30).

ARGUMENT

There is no dispute as to the validity of the arrest of Earl Padgett, who lived on petitioner's

farm and was his employee, and who was found at the time of his arrest in the act of committing a felony, *i.e.,* removing non-taxpaid liquor from a storage place in a bedroom in petitioner's house, and selling it to persons who drove into the backyard and asked to buy it. Cf. *United States* v. *DiRe,* 332 U. S. 581. The issue is whether, as incident to that lawful arrest in the backyard of petitioner's house, the officers had the right to enter the house and make a search of the one room from which Padgett was seen on that and other occasions to procure the liquor. As the court below held, the search here involved falls within the rationale of those cases which have held reasonable, and therefore valid, a search without warrant of premises within the immediate control of the person legally arrested for the purpose of finding the fruit of the crime or the instrumentality through which it was committed. See: *United States* v. *Rabinowitz,* 339 U.S. 56; *Harris* v. *United States,* 331 U.S. 145; *Marron* v. *United States,* 275 U.S. 192; *Agnello* v. *United States,* 269 U.S. 20, 30.

Insofar as the illegal sales of liquor were concerned Padgett was in control. On two separate occasions, federal officers had been told that they could get liquor when he arrived. They had observed him selling liquor, not only to the informer, but to others. They knew that he was procuring the liquor from a part of the house reached through a doorway which they had seen him enter and leave on several occasions. To all appearances, he was

running the "curb service" liquor business.[2] Hence, if the search would have been constitutionally justified had it been petitioner who was apprehended in the act of removing liquor from the room of his house and selling it to customers in his yard, it was justified in the circumstances of this case. As the Court of Appeals observed (Pet. 10-11):

> If a person allows a felon to use his home for illegal purposes, then evidence obtained on a search made after arrest of the felon is admissible against the owner of the home. The search in this case was reasonable, being incidental to the arrest of Padgett. It is not necessary that the owner be the party arrested in such a case.

The area of search was reasonable in relation to the crime observed, and therefore valid. The only room searched was the one in the immediate control of Padgett from which he was getting the non-taxpaid liquor. It was searched immediately after he had come through the door leading to that room with the non-taxpaid liquor, in the very act of committing a felony. While it is true that a house was entered in connection with the search of that one room, that fact does not distinguish this case from the other cases where searches of the immediate area have been upheld as an incident of a

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[2] The criteria of reasonableness are the facts known to the officers at the time of arrest. *Johnson* v. *United States*, 333 U.S. 10, 16.

valid arrest. In *Agnello* v. *United States,* 269 U.S. 20, the right of arresting officers "to search the place where the arrest is made" was held not to permit a search "several blocks distant from Alba's house, where the arrest was made" (*Ibid.,* pp. 30-31), but did justify the entry into and search of Alba's house where the officers, who were watching through windows, had observed an illicit transaction in drugs.[3] In *Marron* v. *United States,* 275 U. S. 192, 199, in upholding a search contemporaneous with a valid arrest for a crime committed in their presence, this Court stated that the authority of the officers "to search and seize the things by which the nuisance was being maintained, extended to all parts of the premises used for the unlawful purpose." Still later in *Harris* v. *United States,* 331 U. S. 145, this Court again sustained the authority of arresting officers to search beyond the immediate place of arrest to those places within the control of the person arrested, even in a situation where no crime was being committed in the presence of the arresting officers and where the only fruit of the five-hour search of the four-room apartment was evidence of an offense by the person arrested other than the crime which was the subject of his arrest.[4] See also *Matthews* v. *Correa,*

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[3] The record shows that the search involved four rooms; the agents entered through the kitchen, and found the packages of narcotics on the table in the dining room, where the men were arrested, and in one bedroom. One agent testified that he "searched all around the place." (O.T. 1925, No. 6; R. 62, 129, 219).

[4] This Court in the *Harris* case (331 U.S. 152, fn. 16), cited with approval the decision in *United States* v. *Lindenfeld,*

135 F. 2d 534 (C.A. 2). And more recently in *United States* v. *Rabinowitz*, 339 U. S. 56, although only a one-room office was involved, this Court again cited with approval the *Agnello*, *Marron* and *Harris* cases, and noted that there was no fixed formula of reasonableness in such situations; that the facts of the particular case were, in the first instance, for the trial court to evaluate in their totality (*Ibid.*, p. 63).[5]

In the context of one case the area of permissive search might not extend from the room of arrest to the next room. In another the facts might justify a more extensive search than even the four rooms involved in the *Harris* case (see 331 U. S. at p. 152). Certainly the reasonableness of a search cannot be determined solely on the basis of the

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142 F. 2d 829 (C.A. 2), certiorari denied, 323 U.S. 761. There Judge Clark speaking for a unanimous court, and after reviewing the guideline cases on the subject of the permissible area of adjacent search, said (*Ibid.*, p. 832): "The better view as to area is that the search can cover that part of the premises over which the offender's control and unlawful activities likely extended."

[5] Although this Court cited several factors which justified the conclusion of the district court that the search and seizure were reasonable, in that factual setting (339 U.S. at p. 64), petitioner's suggestion that this case should be evaluated in relation to those factors alone is not sustained by the opinion. In one respect the instant facts are even stronger than in *Rabinowitz*. Here a felony was being committed in the immediate presence of the arresting officers, whereas in *Rabinowitz* the facts showing probable cause to justify the issuance of the arrest warrants and the incidental search without search warrant of the business premises were gleaned over a week before the arrest. This same distinction might be made as regards the *Harris* case, involving a search of private premises.

square footage of the area searched, or the fortuitous circumstance that the arrest was made in the doorway or the living room rather than a few feet away in the backyard. What is more important is whether that part of the premises searched is within the control of the person arrested, and whether such area is being used for the unlawful purpose for which the accused is being arrested. *Marron* v. *United States, supra* (275 U. S. at p. 199). In an analogous situation, where a defendant was seen to flee from a barn which was reasonably believed by federal officers to be used as a distillery, and was apprehended about a hundred feet away, the Court of Appeals for the Eighth Circuit, in sustaining the subsequent search of the barn, said in *Kelley* v. *United States,* 61 F. 2d 843, 847:

> It is contended there was no right to search the barn, it not being the place of arrest, and counsel relies on Agnello v. United States, supra, where the court speaks of the right without a search warrant contemporaneously to search persons lawfully arrested "while committing crime and to search the place where the arrest is made," etc., and counsel argues that the right does not extend to other than the immediate place of arrest. In the Agnello Case, Agnello's house, which was the subject of the search, was several blocks distant from the place where the arrest was made, and when it was entered the conspiracy had terminated and defendants were under

arrest and custody elsewhere. Surely the place of search is not the mere spot upon which a defendant stands when he is arrested. It would seem rather an affront to common sense to say that were officers on the outside of a building where a murder was being committed, heard shots and screams from within, observed a person running from the door with a smoking revolver in his hands, and they pursued him and arrested him within a hundred feet of the building where the crime was committed and from which he had fled, that they could not search the building, but must be content with looking over the spot where the arrest actually took place.

The word "place" as used by the Supreme Court in the Agnello Case certainly should be given no such narrow meaning as counsel seeks to give it here. The barn was in the immediate vicinity of the place where the arrest was made.

The decisions of the two courts below upholding the reasonableness of the search is thus a correct application of settled principles to the particular facts of this case. The crime which invoked both the arrest and search was committed in the presence of the arresting officers; the one room searched was involved in and was part of the locus of the criminal act; and the search, far from being general or exploratory, was for the specific purpose of finding and destroying a cache of liquor which the arresting officers knew was in the house and might be

destroyed.[6] There is therefore no occasion for further review by this Court.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
CARL H. IMLAY,
Attorneys.

OCTOBER, 1955.

[6] Petitioner's suggestion that this case can be distinguished by the fact that the crime involved is *malum prohibitum* is misconceived. Compare: *Marron* v. *United States*, 275 U.S. 192; *Kelley* v. *United States*, 61 F. 2d 843 (C.A. 8). Aside from the fact that frauds upon the revenue are crimes involving moral turpitude (cf. *Jordan* v. *DeGeorge*, 341 U.S. 223), no such distinction is drawn in the cases.

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